

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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STEVEN SCHROEDER,

Plaintiff-Appellant,

V

MULLER WEINGARTEN CORPORATION,

Defendant-Appellee.

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UNPUBLISHED

April 26, 2011

No. 296420

Wayne Circuit Court

LC No. 2009-011303-CK

Before: SERVITTO, P.J., and HOEKSTRA and OWENS, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order denying his motion for summary disposition and granting summary disposition in defendant's favor. Because the trial court correctly declined to vacate the arbitration award, we affirm.

Plaintiff was employed as president of defendant corporation beginning in 2005. When plaintiff was hired the parties executed an employment agreement providing for plaintiff's salary and other benefits, and for the arbitration of disputes arising out of or in relation to the employment agreement. The agreement also provided for termination of plaintiff "for cause" under certain circumstances, and a twelve month notice of termination if termination was not "for cause." According to plaintiff, in October 2007, he was advised that his job had been eliminated due to the purchase of defendant by another company. Plaintiff demanded arbitration pursuant to the employment agreement, claiming that defendant breached the parties' employment agreement by failing to provide him with the requisite 12 month notice of his termination. The arbitrator found that defendant had breached the parties' agreement and ultimately awarded plaintiff damages in the amount of \$28,614.26, in addition to the twelve months of salary that defendant had already voluntarily paid. Relevant to the instant matter, the arbitrator declined to award plaintiff his attorney fees incurred in bringing the matter to arbitration, as well as other miscellaneous costs. Plaintiff thereafter moved to vacate the arbitrator's award in the circuit court, challenging the arbitrator's refusal to award attorney fees and certain reasonable costs to plaintiff. On cross motions for summary disposition, the circuit court found in defendant's favor and affirmed the arbitrator's award. This appeal followed.

This Court reviews de novo a circuit court's decision on a motion for summary disposition. *Allen v Bloomfield Hills School Dist*, 281 Mich App 49, 52; 760 NW2d 811 (2008).

This Court also reviews de novo a circuit court's decision to enforce, vacate, or modify an arbitration award. *Bayati v Bayati*, 264 Mich App 595, 597-598; 691 NW2d 812 (2004).

On appeal, plaintiff contends that the circuit court should have vacated the arbitration award because in refusing to award plaintiff his requested attorney fees, the arbitrator exceeded the scope of his authority. Specifically, plaintiff contends that the arbitrator misconstrued or failed to apply the contractual language requiring that attorney fees be awarded to the prevailing party. Because the scope of our judicial review of the arbitrator's decision is strictly limited in nature, we do not reach the issue presented by plaintiff.

Our review of an arbitration award is very narrowly circumscribed. As explained in *City of Ann Arbor v American Federation of State, Co, & Muni Employees (AFSCME) Local 369*, 284 Mich App 126, 144-145; 771 NW2d 843 (2009):

A court may not review an arbitrator's factual findings or decision on the merits. Likewise, a reviewing court cannot engage in contract interpretation, which is an issue for the arbitrator to determine. Nor may a court substitute its judgment for that of the arbitrator. Hence courts are reluctant to vacate or modify an award when the arbitration agreement does not expressly limit the arbitrators' power in some way. The inquiry for the reviewing court is merely whether the award was beyond the contractual authority of the arbitrator. If, in granting the award, the arbitrator did not disregard the terms of his or her employment and the scope of his or her authority as expressly circumscribed in the contract, judicial review effectively ceases. Thus, as long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, a court may not overturn the decision even if convinced that the arbitrator committed a serious error. [internal citations and quotations omitted].

In the instant matter, the arbitration requirement and the arbitrator's attendant duties are found in the parties' employment contract as follows:

10. Governing Law; Arbitration. This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of Michigan. All disputes, controversies, claims or differences, which may arise between the parties hereto out of or in relation to this Agreement () shall be settled solely and exclusively by arbitration . . . The costs and fees of the arbitration, including attorneys' fees, shall be allocated by the arbitrators taking into account the parties' intent and agreement that the prevailing party in such dispute shall be entitled to an award of all costs and expenses of such enforcement including, without limitation, reasonable attorneys' fees and all other associated legal costs. .

Plaintiff asserts that he was the prevailing party in the arbitration matter and, as such, he was entitled to an award of his attorney fees. The arbitrator, however, found that while plaintiff prevailed with respect to liability, respondent prevailed with respect to damages. The arbitrator correctly noted that the phrase "prevailing party" was not defined in the parties' contract, but is generally construed to mean the party that improves its position in the litigation. The arbitrator

also found that it was within his discretion to award or decline to award attorneys fees based upon the language in the parties' agreement mandating that the arbitrator "allocate" costs and fees, taking into account the parties' intent that the prevailing party be awarded such reasonable fees. In deciding not to award plaintiff his requested attorney fees, the arbitrator noted that:

Respondent continued to pay Claimant's salary even before I ruled on liability, and (with some delays in payment) paid the entire one year's salary before the final damage briefs were submitted. Excluding his request for attorneys' fees and costs, Claimant sought \$211,013.39 in damages in addition to the salary. My award of \$28,614.26 in addition to salary (excluding attorneys' fees and costs) is far closer to Respondent's figure than to Claimant's. I recognize that Respondent's decision to continue to pay Claimant's salary may have been influenced or even motivated by the fact that Claimant had retained counsel and intended to pursue arbitration. However, whatever the motive, the continued unconditional payments indicate the amount Respondent essentially conceded it owed and is relevant to determine which party "improved its position" in this arbitration.

In rendering his decision, the arbitrator provided a detailed accounting of the requested damages and allocated the costs and fees of arbitration, including attorney fees, taking into account whom he considered to be the prevailing party in the arbitration. Because the arbitrator was contractually provided the authority to "allocate" costs and fees while merely *taking into account* the parties' intent that the fees and costs be awarded to the prevailing party, and the term "prevailing party" was not defined in the parties' agreement, the arbitrator acted pursuant to the terms of the employment agreement's requirements. As such, the allocation was within the scope of the arbitrator's authority.

The issue presented by plaintiff is whether the arbitrator properly interpreted and applied the parties' contract with respect to the term "prevailing party" and to the allocation of attorney fees and arbitration costs. Thus, in requesting that we vacate the arbitration award, plaintiff is seeking to have this Court substitute its judgment for that of the arbitrator and interpret the parties' contract. This is beyond our role. *City of Ann Arbor v American Federation of State, Co, & Muni Employees (AFSCME) Local 369*, 284 Mich App at 144-145. Because the arbitrator did not exceed his powers, and plaintiff has not identified any other basis for vacating the arbitrator's award, the trial court properly granted summary disposition in defendant's favor. MCR 3.602(J)(2).

Affirmed.

/s/ Deborah A. Servitto  
/s/ Joel P. Hoekstra  
/s/ Donald S. Owens